Supreme Court, U.S.
FILED
MAR 25 1991
OFFICE OF THE CLERK

No. 90-1393 (3)

IN THE

SUPREME COURT OF THE UNITED STATES

1990 TERM

WILLIAM KUNTZ, III, et al.

Petitioner,

against

THE CITY OF DAYTON, OHIO, et al.

Respondent.

MEMORANDUM OF RESPONDENT MANLEY, BURKE & FISCHER IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS, SECOND APPELLATE DISTRICT MONTGOMERY COUNTY, OHIO

Timothy A. Fischer, Esq.
Attorney for Respondent
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I. ARGUMENT

There is no federal statutory or constitutional issue of any kind presented by this petition. Manley, Burke & Fischer (a corporation having no parent or subsidiary or affiliated companies) was retained by both of the joint owners of real estate as counsel to defend an eminent domain proceeding brought by the City of Dayton, Ohio. One joint owner was a corporation then in bankruptcy in Delaware and the other joint owner was the petitioner, an individual resident of New York; there was a written contract, and the representation was approved in advance by the Bankruptcy Court.

After the litigation, Manley, Burke & Fischer, pursuant to its written agreement, requested payment of its bill, 50% from the corporation in bankruptcy and 50% from the individual petitioner.

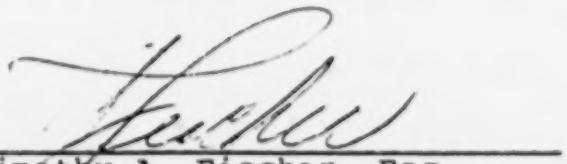
Upon written application to the Bankruptcy Court, and after a hearing, the court allowed approximately $47,000 to be paid by the trustee. That ruling was affirmed by the District Court and further by the Third Circuit, upon appeals taken by the petitioner herein.

When the individual petitioner declined to pay his individual 50%, Manley, Burke & Fischer requested that the Court of Common Pleas enforce the Ohio common law attorneys' charging lien and award respondent the fees due to it from the proceeds of the judgment which were still in the possession of the Court. The decision by the Court of Common Pleas to utilize the Ohio common law doctrine of the attorneys' charging lien to pay respondent from the funds generated

through the eminent domain litigation was affirmed by the Court of Appeals; the Supreme Court of Ohio declined to accept the matter for further review.

Petitioner is now asking this court to review the decision by the Court of Common Pleas to utilize Ohio's common law doctrine of the attorneys' charging lien in the circumstances described above. There is no federal statutory or constitutional question presented, nor is there even a question of Ohio Constitutional law. Petitioner's awkward attempt to somehow entwine the doctrine of the attorneys' charging lien into the pending bankruptcy case is unconvincing; the two matters are simply unrelated and, in any event, do not raise questions of constitutional law or a federal statutory law.

Accordingly, respondent respectfully requests that the petition for writ of certiorari be denied.



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ACKNOWLEDGEMENT OF SERVICE

I hereby certify that the foregoing Memorandum of Respondent Manley, Burke & Fischer in Opposition to the Petition for Writ of Certiorari is being mailed to Petitioner, William Kuntz III, Box 1722, Broadway Station, Albany, New York 11201, on the 21 day of March, 1991. All parties required to be served have been served, as indicated above.

Timothy A. Fischer

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